

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: May 27, 1998

TO : Richard L. Ahearn, Regional Director
Region 9

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: General Motors Corp., Delphi Harrison
Case 9-CA-35701
IUE, Local 801
Case 9-CB-9769

524-1717-1000
536-5075-5083
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These cases were submitted for advice on whether the Employer and the Union violated Section 8(a)(3) and Sections 8(b)(1)(A) and (2) respectively when they agreed to eliminate an elected Union position in circumstances the Union discriminatorily sought to eliminate that position.

Until 1996, the Employer Delphi had two plants, in Dayton and nearby Moraine. Under the applicable bargaining agreements between Delphi, Local 801 and the International, union representation in each plant was led by a plant chairman, elected by Union members at that plant. Each plant chairman led a plant subcommittee. The members at large also elected an Executive Shop Chairman who was primarily responsible for coordinating matters at the Dayton and Moraine plants. Unlike the plant chairman position, the Executive Shop Chairman position is not contained in any bargaining agreement. However, both the plant chairman and Executive Shop Chairman positions are full-time Union positions, paid by the Employer.

Charging Party Campbell worked at the Moraine plant where he was an elected plant chairman with a 3-year term to expire in 1999. The Executive Shop Chairman for both plants was Owens. In an International Union election in November 1996, Campbell supported the losing slate while Owens supported the winning slate. After this election, the International began removing appointed Local 801 officials who had opposed the winning slate.

Also, starting in 1995 and continuing into 1996, the Employer closed the Dayton plant leading to the elimination of the Dayton plant chairman position. This left two Union representatives responsible for a single plant, i.e., the Moraine plant chairman Campbell, and the Executive Shop Chairman Owens,. In 1996, the Employer and Local 801 reached agreement on the effects of the closing of the Dayton plant. Afterwards, Campbell approached management and asked for and received letters of understanding whereby the positions of plant chairman and Executive Shop Chairman would remain in existence until the current incumbents lift office. These letters also agreed that there would be no "redistricting" negotiations until July 1998. The Local 801 and International bargaining agreements provide for union representation (number and types of committeemen) based on the population of the plants. Local 801's agreement states that either the Employer or the Plant Committee can request "redistricting" negotiations of this union representation. The bargaining agreement further provides that any redistricting agreement must be approved by Local 801's negotiating committee.

In January 1997, Owens notified the Employer that he had just become aware of the Campbell negotiated letters of understanding preserving the current occupants of the Moraine chairman positions. Owens advised the Employer that Campbell had had no authority to negotiate such agreements, which Local 801 considered null and void. Owens also announced that he and the shop committeemen, without Campbell as the nominal shop committee chairman, constituted the appropriate plant shop committee authorized to engage in such representation negotiations.

In May 1997, Owens requested redistricting negotiations for the Moraine plant. Owens' plant committee proposed eliminating the plant chairman position occupied by Campbell and assigning those duties to Owens as Executive Shop Chairman. The Employer asserts that it wanted to eliminate one of the two "chairman" positions now that the Dayton plant had closed, and didn't care which position it was, nor who occupied it. The Region has already found that Owens' sole purpose for opening these negotiations was to eliminate Campbell's elected position.¹

¹ The Region notes that bitter animosity openly existed between Owens and Campbell, and that Owens made statements

Campbell was aware of Owens' redistricting negotiations and voiced objections to the Employer, demanding that they cease. The Employer responded that redistricting was appropriate at that time; that it felt it was negotiating with a proper shop committee, at that committee's request; and that it believed Campbell did not have the authority to stop these negotiations. Campbell responded that the proper negotiating committee should include himself together with some different individuals whom Campbell named. At various times, Campbell advised the Employer that Owens' actions were politically motivated, and that the Employer was being drawn into the middle of an internal union dispute.

In June 1997, Campbell brought the redistricting matter before Local 801's Executive Board. That Board, including Owens, voted unanimously that no union official would negotiate any agreement which reduced the number of union representatives. After that meeting, Owens announced that, regardless of that vote, he would get rid of Campbell's elected position.

In October 1997, the Employer and Owens' shop committee entered into a redistricting agreement which eliminated Campbell's plant chairman position. That agreement was never presented to nor approved by Local 801's negotiation committee, as required by the parties' bargaining agreement. Instead, it was approved by an International Union officer. Nevertheless, the Employer ceased recognizing Campbell as a Union official and returned him to a unit job in the plant. As a result, Campbell lost superseniority protection as well as opportunities for overtime which he had received as plant committee chairman.

that he would "get" Campbell by putting him back in the unit, i.e., eliminating his elected Union position. In addition, at some point in early 1997 after Campbell had a physical confrontation with a member of the shop committee, Campbell was informed that the shop committee no longer recognized him as their committee chairman. Campbell thereafter stopped attending labor-management meetings which apparently were "chaired" by Owens.

Thereafter, Local 801's Executive Board protested Owens' redistricting agreement and sought to displace Owens with Campbell as a new Executive Shop Chairman. The International Union, however, supported Owens' redistricting agreement. In October 1997, Local 801 filed a Section 8(a)(5) charge attacking the Employer's removal of Campbell and the honoring of Owens' redistricting agreement. In November, the International reacted by placing Local 801 in trusteeship. The International appointed Trustee promptly filed a withdrawal request with the Region over the above Section 8(a)(5) charge. Local 801 officers reacted by filing a federal district court lawsuit challenging the trusteeship. The Region decided to hold in abeyance the Section 8(a)(5) case pending a resolution of that matter in district court.

We conclude, in agreement with the Region, that the Employer and Local 801 headed by Owens unlawfully entered into the redistricting agreement eliminating Campbell's elected plant chairman position for discriminatory reasons.

The Board will bargaining agreement provisions which discriminate based upon union membership or union activity to violate Sections 8(b)(1)(A) and (2) and Section 8(a)(3).² In the instant case, the Region has found that Local 801 headed by Owens entered into the October 1997 redistricting negotiations for the purpose of entering into an agreement eliminating Campbell's elected plant chairman position, i.e., to discriminate against Campbell because of his protected internal union activity. Such intended discrimination violated Section 8(b)(1)(A) and (2).

The Union's discriminatory motive against Campbell was not privileged by Shenango Inc., 237 NLRB 1355 (1978), which held that the Section 7 right to participate in intraunion activity must be balanced against a union's legitimate interest in having its offices occupied by individuals whom the union believes will be loyal and can best serve its interests. We have taken the position that this legitimate interest in loyalty is not available to a union seeking to remove of an elected union official,

² See, e.g., Manitowoc Engineering Co., 291 NLRB 915 (1988).

finding instead a violation of Section 8(b)(1)(A).³ Given Campbell's occupation of such an elected position, the Union enjoyed no special privilege in discriminating against him because of his previous and protected activity in the International Union's internal election.

Finally we conclude, in agreement with the Region, that the Employer violated Section 8 (3) by entering into this discriminatory agreement with Local 801 headed by Owens. The Employer clearly knew of Local 801's motive in these negotiations, particularly since Campbell expressly advised the Employer of that fact as early as May 1997. Thus the Employer knowingly acquiesced in and cooperated with the Union's unlawful efforts to remove an elected union official because of his protected internal union activity.⁴ As a remedy, the Region should require the parties to abrogate

³ See SEIU Local 254 (Brandeis University), 1-CB-8835, Advice Memorandum dated January 9, 1997.

⁴ Cf. Wolf Trap Foundation for the Performing Arts, 287 NLRB 1040 (1988) involving employer's delegation to union of hiring authority where employer knew the union would exercise delegated authority discriminatorily.

the unlawful redistricting agreement and restore the status quo ante.

B.J.K.